

**ORIGINAL**

Decision No. 50090

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOE DE MARIA,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a corporation,

Defendant.

Case No. 5525

Oliver L. Linck, Jr., for complainant. Pillsbury,  
Madison & Sutro, by John A. Sutro, and Lawler, Felix  
& Hall, by L. B. Conant, for defendant.

O P I N I O N

The complaint alleges that Joe De Maria, who is one of the owners of the Coconino Restaurant, located at 11941 Valley Boulevard, El Monte, California, prior to February 10, 1954 was a subscriber and user of telephone service furnished by defendant telephone company under number FOrrest 8-9211. On or about February 10, 1954 these telephone facilities were disconnected by the defendant telephone company allegedly for the reason that the facilities were being used to violate the law. On or about January 29, 1954 Raymond Kath, an employee of the Coconino Restaurant, was arrested and charged with bookmaking, but complainant alleges he had no knowledge or information that such activity had been or was being carried on by said employee and he

now has issued orders that employees are not to use the telephone in said restaurant. It is also alleged that the complainant and the two other owners of the Coconino Restaurant did not use and do not now intend to use the telephone facilities as an instrumentality to violate the law, that defendant has refused to restore telephone facilities to complainant although demand has been made therefor and that the complainant has suffered and will suffer irreparable injury and great hardship as a result of being deprived of the telephone facilities in question.

Under date of February 25, 1954 the complainant filed a supplement to his original complaint in which it is alleged that on February 16, 1954 the employment of Raymond Kath was terminated.

On March 8, 1954 the telephone company filed an answer, the principal allegation of which was that the defendant telephone company had reasonable cause to believe that the telephone service furnished to complainant under number Forest 8-9211 was being or was to be used as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law and that having such reasonable cause, defendant was required to disconnect the service pursuant to Decision No. 41415 dated April 6, 1948 in Case No. 4930 (47 Cal. P.U.C. 853).

By Decision No. 49763 dated March 9, 1954 in Case No. 5525, this Commission issued an order granting temporary interim relief and directing the telephone company to restore telephone service to complainant pending a hearing on the matter.

A public hearing was held in Los Angeles on May 7, 1954 before Examiner Syphers, at which time evidence was adduced and the matter submitted.

At the hearing the complainant testified that the telephone facilities in question consisted of a public pay telephone in the front part of the restaurant and an extension in the stock room. Outgoing calls had to be made from the public telephone, but incoming calls could be received over both the public phone and the extension. On January 29 an employee Raymond Kath was arrested by deputy sheriffs from the Los Angeles County Sheriff's Office and at that time the extension telephone was taken out. Subsequently on or about February 10, 1954 the public telephone was disconnected. Complainant further testified that he had terminated the services of Raymond Kath on February 16, 1954 and that Kath no longer had access to or used the telephone facilities. He further stated that he had no knowledge of bookmaking activities on the part of Kath, that he himself had engaged in no unlawful activities and did not intend to do so, and that telephone facilities were necessary in the conduct of his business.

An employee of the Coconino Restaurant, who works there as a waitress, testified that she was present on January 29, 1954 when Kath was arrested. She stated that Kath had acted as a bartender and that the public telephone was outside of the bar area. It was her observation that Kath normally did not answer the telephone.

A deputy sheriff from the Los Angeles County Sheriff's Office testified that he, in the company of four other deputies, entered the premises at 11941 Valley Boulevard, El Monte, California, on January 29, 1954 at approximately 2:30 p.m. They found Kath in the office at the rear of the bar using the telephone

and making notations on a piece of paper. Upon questioning, Kath admitted that he was taking bets on horse races and had been doing this for about two and one-half weeks. He stated that he took between \$30.00 and \$40.00 in bets per day over the telephone. At that time the officers removed the extension telephone. The complainant De Maria was present on this occasion, but disclaimed any knowledge of any bookmaking activities. While the deputies were there the telephone rang four times and on each occasion bets were recorded by the officers.

Exhibit No. 1 is a letter from the sheriff of Los Angeles County to The Pacific Telephone and Telegraph Company dated February 3, 1954, requesting that telephone service under number Forest 8-9211 at 11941 Valley Boulevard be disconnected. Subsequently the telephone company did disconnect the service in question. The position of the telephone company was that it had acted with reasonable cause in disconnecting the telephone service, inasmuch as it had received the letter designated as Exhibit No. 1.

After a consideration of this record we now find that the telephone company's action was based on reasonable cause as such term is used in Decision No. 41115, supra. We further find that the telephone facilities here in question were used as an instrumentality to aid and abet the violation of the law, although there is no evidence that these facilities were so used by the complainant herein.

In the light of this record and in view of the fact that complainant was deprived of his telephone facilities from February 10, 1954 to March 12, 1954, as disclosed by evidence in

this case, we now find that complainant is entitled to telephone service.

O R D E R

The complaint of Joe De Maria against The Pacific Telephone and Telegraph Company having been filed, public hearing having been held thereon, the matter now being ready for decision, and the Commission being fully advised in the premises and basing its decision upon the evidence of record and the findings herein,

IT IS ORDERED that the complainant's request for restoration of telephone service be granted and that the temporary interim relief granted by Decision No. 49763 in Case No. 5525 be, and it hereby is, made permanent, such restoration being subject to all rules and regulations of the telephone company and to the existing applicable law.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California,  
this 25th day of May, 1954.

John E. Mitchell  
President

Justin F. Casner

Kenneth Patten

Gene Roggin

Commissioners